

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.**

FIRST APPEAL NO.115 OF 1987

Shri Krishna Lalu Ghodge : Appellant.

versus

Smt.Pushpalata Lilachand Shet

& ors. : Respondents.

Mr.B.R.Patil for the appellant.

None for the respondents.

CORAM : D.G.DESHPANDE, J.

DATED : 14th June 2005.

ORAL ORDER

1. Heard advocate for the appellant. Nobody is present for the respondents. There was a collusion between two auto rickshaws. The appellant was driving one of the auto rickshaws with some children. The other auto rickshaw was being driven by the respondent No.5. It was over loaded with six passengers. The tyre of the auto

rickshaw of the appellant got burst and it dashed against the auto rickshaw of the respondent resulting in death of one passenger in that auto rickshaw. The M.A.C.T. Ratnagiri ordered the appellant to pay Rs.40,000/- as compensation to the claimants. Hence this appeal.

2. Counsel for the appellant firstly contended that if from the evidence on record it was clear that the accident occurred because the tyre of the auto rickshaw got burst then it could not be said that it was an act of negligence on the part of the appellant. He also contended that the claimants had examined one of the occupants of the auto rickshaw of the respondent in support of their contention and, this witness is P.W.4 who has stated that respondent No.5 was driving the auto rickshaw in excessive speed. He also contended that the finding arrived at by the tribunal regarding manner in which the accident took place recorded in para 20 clearly shows in the alternative that it was a case of contributory negligence. He drew my attention to the evidence of Ismail Makhajankar who was the witness for Opponent No.3. The witness Ismail has stated that four person got into his rickshaw

forcibly. It was contended that this has to be rejected as a false statement on oath made with a view to avoid the responsibility. This witness Ismail - Opponent No.3, in order to shirk his responsibility, also stated that deceased Sheth had jumped out of the rickshaw and his head was hit against a stone.

3. From the aforesaid evidence of Ismail - Opponent No.3 it is clear that he is tried to suppress the truth and made his story and in any case if at all rear left tyre of the rickshaw of the appellant got burst and it dashed against the rickshaw of respondent No.5 which was already over loaded, then this was a case of contributory negligence. Both drivers are contributing to the negligence of 50% each. However, this important aspect has not at all been considered by the tribunal and, therefore, this appeal is required to be allowed partly. Hence the order :-

:ORDER:

The appeal is allowed partly.

The impugned order of the tribunal is

modified. The appellant shall be liable to pay Rs.20,000/- as his 50% contribution and, Respondent No.5 shall be liable to pay Rs.20,000/- in the compensation that is awarded with interest.

No order as to costs so far as this appeal is concerned.

[D.G.DESHPANDE]

14/06/2005

JUDGE.